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Attorneys for Defendants BYRON & EDWARDS, APC; BYRON EDWARDS MOSTOFI, APC; MICHAEL M. EDWARDS; THOMAS W. BYRON

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EVANSTON INSURANCE CO., an Illinois corporation; MARKEL SHAND, INC., an Illinois corporation;, Plaintiffs, vs. BYRON & EDWARDS, APC; BYRON EDWARDS MOSTOFI, APC; MICHAEL M. EDWARDS, ESQ.; an individual; THOMAS W. BYRON, ESQ.; an individual; and DOES 1-50, inclusive,, Defendants.	CASE NO. 08 CV 407 BTM LSP **ANSWER OF DEFENDANT THOMAS W. BYRON TO COMPLAINT FOR LEGAL MALPRACTICE AND BREACH OF FIDUCIARY DUTY** **DEMAND FOR JURY TRIAL**

Defendant THOMAS W. BYRON (hereinafter "Defendant" or "BYRON"), hereby responds to Plaintiffs' Complaint for Legal Malpractice and Breach of Fiduciary Duty as follows:

THE PARTIES

1. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 1 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

2. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 2 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

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3. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 3 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

4. Defendant admits the allegations contained in Paragraph 4 of Plaintiffs' Complaint.

5. Defendant denies that Defendant BYRON EDWARDS MOSTOFI, APC ("BEM") is a law firm and a California Professional Corporation authorized to transact business in the State of California, with its principal place of business in San Diego, California. Defendant admits that BEM was at all times relevant a law firm and a California Professional Corporation authorized to transact business in the State of California, with its principal place of business in San Diego, California.

6. Defendant admits the allegations contained in Paragraph 6 of Plaintiffs' Complaint.

7. Defendant admits the allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 8 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

9. Defendant admits that at all relevant times herein, Defendants MICHAEL M. EDWARDS ("EDWARDS") and BYRON were the agent, representative, and/or employee of Defendants BEM or BYRON & EDWARDS, APC ("B&E), and that at all times they were each acting within the course, purpose and scope of their agency, representation, and/or employment. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 9 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

JURISDICTION and VENUE

10. Defendant admits that Defendants EDWARDS and BYRON are citizens of California and that Defendant B&E is a professional corporation whose principal places of business is in California. Defendant denies that Defendant BEM is a professional corporation whose principal place of business is in California. Defendant is without sufficient knowledge or

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information to either admit or deny the remaining allegations contained in Paragraph 10 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

11. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 11 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

12. Defendant admits that on or about May 18, 2004, Joanne Rogers ("Rogers") filed a Complaint in the Superior Court of the State of California for the County of San Diego, entitled *Joanne Rogers v. Watermark Owners Association, et al.*, bearing Case No. GIC830102 ("Rogers Action"). Defendant admits that on or about December 20, 2005, Rogers filed a First Amended Complaint ("FAC") adding Summit Consulting & Architecture, Inc. ("Summit") as a named defendant, and that on or about April 12, 2006, Rogers filed a Second Amended Complaint ("SAC") in which Summit remained a Defendant. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 12 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

13. Defendant admits that on or about January 16, 2006, EDWARDS was a co-shareholder, employee and agent of BEM. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

14. Defendant admits that EDWARDS' co-shareholder, BYRON, who was an employee and agent of BEM, was attorney of record and representing The Szaras Companies, Inc. ("Szaras"), a defendant in the Rogers Action. Defendant denies the allegation that because Szaras was a defendant in the Rogers Action, Szaras' interests actually conflicted with the interests of the Summit Consulting & Architecture, Inc. ("Summit") and Michael Kiss ("Kiss") (collectively the "Insureds"). Defendant denies the allegation that because Szaras was a defendant in the Rogers Action, Szaras' interests actually conflicted with PLAINTIFFS' interests in determining whether there was coverage owed to the "Insureds" for the Rogers Action. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph

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14 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

15. Defendant admits that, at all times relevant hereto, BYRON and EDWARDS were co-shareholders, and that BYRON and EDWARDS were agents and employees of BEM or B&E. Defendant denies that he was retained by PLAINTIFFS to provide legal counsel and advice to PLAINTIFFS. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 15 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

16. Defendant denies that EDWARDS, BYRON, BEM and B&E understood and accepted that they were jointly and collectively retained to represent PLAINTIFFS. Defendant denies that he owed any duties to PLAINTIFFS. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 16 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

17. Defendant denies the allegations contained in Paragraph 17 of Plaintiffs' Complaint.

18. Defendant denies the allegations contained in Paragraph 18 of Plaintiffs' Complaint.

19. Defendant denies that he violated CRPC Rule 3-310 or any ethical, professional or fiduciary responsibilities. Defendant denies that he had any obligation to provide written disclosure of any alleged relationship with Szaras. Defendant denies the allegation that Szaras interests actually and/or potentially conflicted with PLAINTIFFS' interests or the interests of the Insureds. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 19 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

20. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 20 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

21. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 21 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

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22. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 22 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

23. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 23 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

24. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 24 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

25. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 25 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

26. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 26 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

27. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 27 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

28. Defendant denies the allegation that there was an actual and/or potential conflict that was created by EDWARDS' representation of PLAINTIFFS and BYRON's representation of Szaras. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 28 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

29. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 29 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

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30. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 30 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

31. Defendant admits that, at all times relevant, BYRON was EDWARDS' co-shareholder. Defendant admits that BYRON was representing Szaras relative to the Rogers Action. Defendant is without sufficient knowledge or information to either admit or deny the allegation that at no time prior to issuing the second coverage opinion did EDWARDS ever disclose to PLAINTIFFS that BYRON was representing Szaras relative to the Rogers Action. Defendant denies that there was a conflict of interest as a consequence of EDWARDS' representation of PLAINTIFFS and BYRON's representation of Szaras. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 31 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

32. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 32 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

33. Defendant denies the allegation that he tried to keep from PLAINTIFFS the fact that while EDWARDS was representing PLAINTIFFS, and providing coverage advice to PLAINTIFFS relative to the Rogers Action, Defendant was representing Szaras, a defendant in the Rogers Action. Defendant admits that there was no conflict of interest posed by the fact that while EDWARDS was representing PLAINTIFFS, and providing coverage advice to PLAINTIFFS relative to the Rogers Action, Defendant was representing Szaras, a defendant in the Rogers Action. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 33 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

34. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 34 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

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35. Defendant is without sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 35 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

36. Defendant denies the allegation that PLAINTIFFS incurred any costs or attorneys' fees defending the Summit Action as a consequence of any acts or conduct of EDWARDS, BYRON, B&E or BEM. Defendant is without sufficient knowledge or information to either admit or deny the remaining allegations contained in Paragraph 36 of Plaintiffs' Complaint and therefore Defendant denies them and leaves Plaintiffs to their proofs.

FIRST CAUSE OF ACTION FOR PROFESSIONAL NEGLIGENCE

(By PLAINTIFFS Against all Defendants)

37. Defendants hereby incorporate by reference each and every response set forth in Paragraphs 1 through 36 above, as though fully set forth herein.

38. Defendant denies that he formed an attorney-client relationship with PLAINTIFFS in regards to the Rogers Action. Defendant admits that, to the extent an attorney-client relationship existed between any other defendants and PLAINTIFFS, the other defendants owed PLAINTIFFS a duty to conform to the applicable standard of care and a fiduciary duty. Defendant denies the remaining allegations contained in Paragraph 38 of Plaintiffs' Complaint.

39. Defendant denies that he formed an attorney-client relationship with PLAINTIFFS in regards to the Rogers Action. Defendant admits that, to the extent an attorney-client relationship existed between any other defendants and PLAINTIFFS, the other defendants owed PLAINTIFFS a duty to conform to the applicable standard of care and a fiduciary duty. Defendant denies the allegations contained in Paragraph 39 of Plaintiffs' Complaint.

40. Defendant denies the allegations contained in Paragraph 40 of Plaintiffs' Complaint.

SECOND CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY

(By PLAINTIFFS Against all Defendants)

41. Defendants hereby incorporate by reference each and every response set forth in Paragraphs 1 through 40 above, as though fully set forth herein.

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42. Defendant denies that he formed an attorney-client relationship with PLAINTIFFS in regards to the Rogers Action. Defendant admits that, to the extent an attorney-client relationship existed between any other defendants and PLAINTIFFS, the other defendants owed PLAINTIFFS a duty to conform to the applicable standard of care and a fiduciary duty. Defendant denies the remaining allegations contained in Paragraph 42 of Plaintiffs' Complaint.

43. Defendant admits that at all times relevant, BYRON and EDWARDS were co-shareholders, and that they were agents and employees of BEM or B&E. Defendant denies that he had an attorney-client relationship with PLAINTIFFS and therefore denies that he owed PLAINTIFFS any duties. Defendant denies the remaining allegations contained in Paragraph 43 of Plaintiffs' Complaint.

44. Defendant denies that he had an attorney-client relationship with PLAINTIFFS and therefore denies that he owed PLAINTIFFS any duties. Defendant denies the remaining allegations contained in Paragraph 44 of Plaintiffs' Complaint.

45. Defendant denies the allegations contained in Paragraph 45 of Plaintiffs' Complaint.

46. Defendant denies the allegations contained in Paragraph 46 of Plaintiffs' Complaint.

47. Defendant denies the allegations contained in Paragraph 47 of Plaintiffs' Complaint.

48. Defendant denies the allegations contained in Paragraph 48 of Plaintiffs' Complaint.

WHEREFORE, Defendant seeks relief as set forth in the Prayer below.

AFFIRMATIVE DEFENSES

Defendants BYRON & EDWARDS, APC, BYRON EDWARDS MOSTOFI, APC, and MICHAEL M. EDWARDS (hereinafter "Defendants") hereby set forth the following affirmative defenses as to each and every alleged cause of action contained in Plaintiffs' Complaint:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' Complaint and each cause of action contained therein fails to state facts sufficient to constitute a cause or causes of action against this answering Defendant.

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SECOND AFFIRMATIVE DEFENSE

(Comparative Negligence)

2. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that any and all events and happenings in connection with the allegations contained in Plaintiffs' Complaint, and the resulting injuries and damages, if any, referred to therein, were proximately caused and contributed to by the negligence of Plaintiffs in that Plaintiffs did not exercise ordinary care or reasonable care in their own behalf at the time and place referred to. Any losses and damages alleged or sustained by Plaintiffs were proximately caused by Plaintiffs' own negligence and should, therefore, be reduced by the amount of fault attributable to Plaintiffs.

THIRD AFFIRMATIVE DEFENSE

(Lack of Causation)

3. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that the conduct of this answering Defendant was not the proximate or legal cause of any damages allegedly suffered by Plaintiffs.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

4. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs have failed, neglected and refused to mitigate their damages, if any, and are thus barred from compensation for losses which could have been prevented by reasonable efforts on the part of Plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

5. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that said Complaint and each and every cause of action contained therein, is barred by the applicable statutes of limitations.

SIXTH AFFIRMATIVE DEFENSE

(Laches)

6. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' recovery herein is limited or barred under the doctrine of laches.

SEVENTH AFFIRMATIVE DEFENSE

(Offset)

7. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that pursuant to Civil Code Section 1431.2, *et seq.*, that if said Defendant is held liable for damages to Plaintiffs, or any other party, in any amount, then said Defendant is only severally liable in an amount equal to his proportional share of liability for any non-economic damages allegedly suffered by the Plaintiffs.

EIGHTH AFFIRMATIVE DEFENSE

(Waiver)

8. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' recovery herein is limited or barred under the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

(Consent)

9. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs consented to the acts and conduct of this answering Defendant upon which the Complaint is based.

TENTH AFFIRMATIVE DEFENSE

(Release)

10. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that any liability of Defendant as alleged in the Complaint has been extinguished and released.

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ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

11. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' recovery herein is limited or barred under the doctrine of estoppel.

TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

12. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs are barred and precluded from recovery in this action under the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

(Justification)

13. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that the acts and conduct of this answering Defendant upon which the Complaint is based were justified.

FOURTEENTH AFFIRMATIVE DEFENSE

(Supervening Causes)

14. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that any and all alleged events, happenings, resulting injuries and damages, if any, were proximately caused by the acts or conduct of Plaintiffs and/or by other or unknown third parties over whom this Defendant had no control, which acts or conduct were intervening and superseding causes of the injuries and damages, if any, which Plaintiffs' claim, thus barring Plaintiffs from any recovery against this answering Defendant.

FIFTEENTH AFFIRMATIVE DEFENSE

(Lack of Reliance)

15. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs did not rely or reasonably rely on any information provided by Defendant or rely on Defendant to provide any information to Plaintiffs.

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SIXTEENTH AFFIRMATIVE DEFENSE

(Lack of Duty)

16. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant denies that he owed a duty to Plaintiffs.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Lack of Attorney-Client Relationship)

17. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant denies that he had an attorney-client relationship with the Plaintiffs at the time Plaintiffs allegedly suffered damages.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Doctrine of Res Judicata/Collateral Estoppel)

18. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' Complaint, and each cause of action and damage claim alleged therein, is barred by the doctrines of res judicata and/or collateral estoppel.

NINETEENTH AFFIRMATIVE DEFENSE

(Privilege, Justification, Fairness, Reasonableness, and Good Faith)

19. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that the acts and conduct of this Defendant at all relevant times were privileged, justified, fair, reasonable under the given circumstances and taken in good faith.

TWENTIETH AFFIRMATIVE DEFENSE

(Assumption of Risk)

20. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that any and all alleged events, happenings, resulting injuries and damages, if any, were caused by or arose out of risks of which Plaintiffs had full knowledge and which the Plaintiffs assumed.

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TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Join A Necessary Party)

21. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' Complaint should be barred for failure to join an indispensable or necessary party.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Doctrine of Equitable Estoppel)

22. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' Complaint, and each cause of action and damage claim alleged therein, is barred by the doctrine of equitable estoppel.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Accord and Satisfaction)

23. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs are barred from recovery for each cause of action and damage claim alleged in their Complaint, pursuant to the doctrine of accord and satisfaction.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Negligence of Successor Counsel)

24. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Plaintiffs' alleged damages, if any, were caused in whole or in part by the negligence of others, including Plaintiffs' successor counsel.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Set-Off)

25. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that to the extent Defendant is liable for any of Plaintiffs' alleged damages, he is entitled to a set-off in the amount obtained by Plaintiffs from any other parties in relation to the allegations set forth in the Complaint.

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TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Full Performance and Discharge)

26. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Defendant performed and fully discharged any and all legal duties and obligations arising out of the matters alleged in the Complaint.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Apportionment)

27. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that any and all damages as alleged in the Complaint, if any, were proximately caused by the joint and several negligence of Plaintiffs and other named or unnamed defendants, their agents, employees or representatives. Accordingly, liability or damages must be apportioned among all the responsible parties.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Fails to State a Claim for Punitive Damages)

28. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that the Complaint fails to set forth facts sufficient to constitute a claim for punitive damages against Defendant.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Lack of Malice)

29. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that any and all of Defendant's actions were not taken maliciously, but, rather, were taken in good faith and upon a reasonable belief that the actions taken were proper under the circumstances.

THIRTIETH AFFIRMATIVE DEFENSE

(Insufficient Knowledge Re: Additional Defenses)

30. As a distinct, separate and further affirmative defense to Plaintiffs' Complaint on file herein, this answering Defendant alleges that Defendant presently has insufficient knowledge or information upon which to form a belief as to whether they may have additional defenses

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available. Defendant reserve the right to assert additional affirmative defenses in the event discovery or further analysis indicate that additional, but presently unknown or unstated, affirmative defenses would be applicable.

PRAYER

WHEREFORE, Defendant THOMAS W. BYRON prays for judgment against Plaintiffs EVANSTON INSURANCE CO. and MARKEL SHAND, INC. ("PLAINTIFFS"), as follows:

A. Dismissing PLAINTIFFS' claims against Defendant with prejudice;

B. For attorneys' fees, and costs and expenses of suit; and

C. For such other relief as the Court deems equitable and just.

JURY DEMAND

Defendant THOMAS W. BYRON hereby demands a trial by jury on all issues alleged in PLAINTIFFS' Complaint so triable.

Dated: April 22, 2008

BUTZ DUNN & DESANTIS
A Professional Corporation

By: ______________________
Kevin V. DeSantis
James A. McFaul
Attorneys for Defendants
BYRON & EDWARDS, APC; BYRON EDWARDS MOSTOFI, APC; MICHAEL M. EDWARDS; THOMAS W. BYRON

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PROOF OF SERVICE

EVANSTON INS. CO. v. BYRON & EDWARDS, et al.
United States District Court, Southern District Case No. 08-CV-407 BTM (LSP)
Judge: Hon. Barry Ted Moskowitz

I, Mary Carpinelli, declare as follows:

I am employed by the law firm of Butz Dunn & DeSantis, whose address is 101 West Broadway, Suite 1700, San Diego, California 92101- I am over the age of eighteen years, and am not a party to this action.

ANSWER OF DEFENDANT THOMAS W. BYRON TO COMPLAINT FOR LEGAL MALPRACTICE AND BREACH OF FIDUCIARY DUTY

Electronic Mail Notice List

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Manual Notice List

The following is the list of attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual noticing).

I declare that I am employed in the office at whose direction the service was made.

Executed at San Diego, California on April 22, 2008.

Mary Carpinelli
Mary Carpinelli (mcarpinelli@butzdunn.com)

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